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In the Supreme Court of the United States

OCTOBER TERM, 1959.

Case No. 688.

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

J. HARVEY CROW,
St. Paris, Ohio,
In Propria Persona.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-9647

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In the Supreme Court of the United States

OCTOBER TERM, 1959.

Case No. _____

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

INTRODUCTION.

J. Harvey Crow, petitioner respectfully prays that a writ of certiorari issue to the Supreme Court of the State of Ohio to review the decision and judgment of that court and the order denying petitioner's application for rehearing in Case No. 35,825 in which the Supreme Court of Ohio denied the application for rehearing and judgment was rendered on the 12th day of November, 1959.

The proceeding against the petitioner originated in the Supreme Court of Ohio.

OPINIONS BELOW.

There have been no opinions rendered herein. All of the pleadings are contained in the transcript and all of the Court's orders are contained in the Appendices A, B, C and D.

JURISDICTION OF THIS COURT.

The judgment of the Supreme Court of Ohio of which review is sought was entered on the 21st day of October, 1959. The order denying petitioner's application for rehearing from which review is sought was dated November 12, 1959.

Jurisdiction to review aforesaid judgment and order is conferred on this Court by the act of June 25, 1948, c. 646, 62 Statute 929, Title 28, U. S. Code, Section 1257 (3).

"(3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * or statutes of * * * the United States."

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgment.

Tumey v. Ohio, 273 U. S., 510;
In Re Murchison, et al., 349 U. S., 133;
In Re Oliver, 333 U. S., 257;
Offat v. United States, 348 U. S., 11;
Staub v. City of Baxley, 355 U. S., 313;
Rosenblum v. Rosenblum, 42 N. Y. S. 2nd, 626.

CONSTITUTIONAL PROVISIONS.

The Amendment to the United States Constitution, Article V, provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Amendment to the United States Constitution, Article VI, provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel in his defense."

The Amendment to the United States Constitution, Article XIV, provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED.

1: Did the Supreme Court of Ohio deprive the petitioner J. Harvey Crow of due process of law as guaranteed to him under the fifth, sixth and fourteenth amendments of the United States Constitution by finding the petitioner guilty of contempt of court after an application was filed in the Supreme Court of Ohio without providing for a hearing to said application either before the Court or special master, without any kind of proof of the allegations contained in said application, without affording an opportunity to the accused to present evidence in support of the answer filed denying said charges.

Said answer denied any acts which would constitute any violation of the court order and in addition set out

seven affirmative defenses, any one of which if proven would be a complete defense to any charge.

2. Did the Supreme Court of Ohio deprive the petitioner of due process of law as provided in the fifth and fourteenth amendment of the Constitution of the United States by taking away and depriving this petitioner, J. Harvey Crow, of certain personal property, without any specific request for said taking, without hearing any evidence in support of such taking, without providing for any hearing or an opportunity for any hearing or giving an opportunity to this petitioner to present evidence at a hearing or trial on said issue.

3. Did the Supreme Court of Ohio deprive this petitioner of due process of law assured him by the fifth, sixth and fourteenth amendment of the United States Constitution when the court ordered this petitioner "to cease forthwith the practice of law" when said petitioner was a member in good standing in the Federal District Court for the Northern District of Ohio, Eastern Division and the finding this petitioner guilty of contempt of court without providing for a hearing, or the taking of any evidence after this petitioner had filed an answer denying the charges and set up defense that he was a member in good standing in the several courts.

4. Did the Supreme Court of Ohio deprive this petitioner of due process of law as provided in the fifth and fourteenth amendments to the United States Constitution when the Court was composed of two judges, whose personal attorneys appeared in these proceedings opposing this petitioner's position?

Did the Supreme Court of Ohio consist of a fair and impartial tribunal when D. H. Jackman, who was a member of a firm that was employed as the personal attorney for the Honorable James F. Bell, presented all matters

before the Supreme Court in opposition to this petitioner?

Did the Supreme Court of Ohio consist of a fair and impartial tribunal when Phillip K. Folk, the attorney for the applicants was also the personal attorney for the Honorable Carl V. Weygandt, especially after this petitioner had requested both of these judges to step aside and permit another judge to take his place as provided by law of Ohio?

STATEMENT OF FACT.

This case originated in the Supreme Court of Ohio.

The material facts in this case are not in dispute.

An application was filed by a group of attorneys. One of said group is John P. Case, a trial judge in the disbarment proceeding in Champaign County, Ohio.

The prayer of the application is as follows:

> "WHEREFORE Applicants pray that this Court make and issue appropriate orders in the premises to protect, maintain and preserve the authority given and granted to this Court by the Constitution of Ohio, and to this end enlist the entire resources of the Court, and the Association to which Applicants belong, by the appointment of counsel for the purpose of implementing the necessary and appropriate instructions and orders of the Court in these premises."

After filing this application, an order to show cause was issued, Appendix A.

J. Harvey Crow, the petitioner, filed a motion to strike and to make definite and certain, to which the Supreme Court of Ohio entered an order striking said motion from the files, Appendix B.

Petitioner J. Harvey Crow on January 21, 1959, filed an answer denying the allegations set forth in said application, and as an affirmative defense set out that he was:

1. Performing certain act or acts which he was permitted to do by virtue of being a member in good standing in the Federal District Court.

2. Performing certain act or acts that he was permitted to do by virtue of being a member in good standing in the United States Supreme Court.

3. J. Harvey Crow set forth seven other affirmative defenses, which if anyone of the defenses were proven would be a complete defense to the charges made.

Without any further notice, without any hearing, without any evidence, without any kind of proof of the allegations contained in said application, without taking any evidence in support of said application, without affording an opportunity to this petitioner to present evidence in support of the answer filed, the Court found the appellant guilty of contempt and entered the order, June 26, 1959, Citation in Contempt, Appendix C.

Application for rehearing was filed.

Immediately prior to this time of filing the application for rehearing J. Harvey Crow, this petitioner, learned that the Honorable Judge James F. Bell a member of the Supreme Court of Ohio, had in the past several years to-wit, March 1, 1957, been acting as executor under a will, in the estate of Tillie Chrisman, Case No. 12793, Probate Court, Madison County, Ohio.

The will was prepared by the firm of Jackman, Nichols and Grubbs, May 22, 1953 and a codicil was attached to said will on June 28, 1955 which was also prepared by attorneys, Jackman, Nichols and Grubbs.

In the administration of said estate the Honorable Judge James F. Bell employed as his personal attorney the firm of Jackman, Nichols and Grubbs. D. H. Jackman is a member of said firm and is one and the same person who appeared as a member of the committee in the disbar-

ment of J. Harvey Crow. Mr. Jackman was the person who appeared and presented all matters to the Supreme Court of Ohio in opposition to J. Harvey Crow in said disbarment proceedings.

On April 10, 1959, the final account filed by the Honorable James F. Bell as executor shows that the said James F. Bell was allowed $8,487.05 for his services as executor, $2,500.00 of which constituted extraordinary compensation. The Honorable Judge James F. Bell did pay his attorneys Jackman, Nichols and Grubbs, $8,995.85 for the services performed by them for him.

The Chief Justice, Carl V. Weygandt, employed attorney, Phillip K. Folk to represent him in Case No. 36,169, filed in the Supreme Court of Ohio at a time when he could have employed the Attorney General of Ohio without obligation for compensation as provided by law. Phillip K. Folk is one and the same attorney who filed this application.

The petitioner, J. Harvey Crow has no knowledge of the exact date when Phillip K. Folk became the personal attorney of the Honorable Carl V. Weygandt.

The statutes and constitution of the State of Ohio do not provide any method of removing a judge of the Supreme Court of Ohio.

This petitioner, J. Harvey Crow requested by letter that the Honorable James F. Bell and Honorable Carl V. Weygandt step aside in the various matters heard by the Supreme Court of Ohio but both judges refused to remove themselves. The Chief Justice, Carl V. Weygandt, never replied to the several letters addressed to him by this petitioner regarding his disqualification, but did by telephone call this petitioner's attorney and inform him he did not want to hear any argument about his qualification when the case was presented to the Court in oral argument.

The Honorable James F. Bell did reply and in one letter said in part:

> "I am surprised, astounded and at a loss to understand your letter requesting me to disqualify myself. * * *."

A copy of this letter was sent to D. H. Jackman.

In another letter, which said in part:

> "As I understand it, only two abstract legal questions are raised by the application now pending. First, whether a reviewing court is authorized by law to allow a stay of execution in a disbarment proceeding; and second, if so, whether a stay should be allowed in this instance. * * * I see no reason for disqualifying myself at this time."

The Supreme Court allowed the Application for Rehearing but at the same time and in the same order found J. Harvey Crow guilty of contempt and retained the personal property of J. Harvey Crow, to-wit, a framed certificate dated August 3, 1927, evidencing his admittance to the practice of law in the State of Ohio. Such certificate had been ordered to be surrendered to the Clerk of the Supreme Court on or before July 1, 1959, as shown by Appendix C.

A demand was made by J. Harvey Crow on the clerk for the return of said personal property but the Clerk under the orders of said court refuses to return said personal property to J. Harvey Crow.

HOW THE FEDERAL QUESTIONS ARE PRESENTED.

The federal questions were presented by the petitioner in his Application for Rehearing. This was his first opportunity to present these questions since there was no trial, no hearing, and no evidence taken to support the application.

The petitioner was not afforded the opportunity to produce evidence to maintain the defenses set forth in his answer.

THE QUESTIONS ARE SUBSTANTIAL.

The petitioner, J. Harvey Crow, urges that the finding of "guilty of contempt" by the Supreme Court of Ohio upon the filing of an application without any evidence to support the charges found in said application, without a hearing, after a denial by this petitioner of said charges in his answer and after setting forth in said answer seven affirmative defenses, and without being afforded an opportunity to present evidence to support said defenses was a violation of the due process clause as found in the fifth, sixth and fourteenth amendments to the Constitution of the United States.

The fifth, and sixth amendments are applicable to the states and can be enforced upon the states by and through the fourteenth amendment of the Constitution of the United States. *Wolf vs. Colorado*, 338 U. S. 25, 27, 28; *Frank v. Maryland*, 359 U. S. 360. *Rosenblum v. Rosenblum*, 42 N. Y. S. 2d 626.

A basic, fundamental, right in our system of jurisprudence under the constitutional provisions of the fifth and sixth amendments is a reasonable notice of the charge against him, and an opportunity to be heard in his defense, a right to his day in Court; and these rights include, as a minimum, a right to examine the witnesses against

him, to offer testimony, and to be represented by counsel. *In Re Oliver*, 333 U. S. 257.

The petitioner in this case was denied all of these minimum rights except notice of the charge.

This Honorable Court has said that knowledge acquired from the testimony of others, or even from the confession of the accused, would not justify conviction without a trial in which there was an opportunity for a defense. *In Re Oliver*, 333 U. S., 257.

The petitioner by the proceedings in the Supreme Court of Ohio was denied the right to a public trial, the right to be confronted by the witnesses against him, to have compulsory process for obtaining witnesses in his favor, the opportunity to present defense to the charges which are basic protections secured by the sixth amendment to the Constitution of the United States. In *Cook v. U. S.*, 267 U. S., 517.

Proceedings in contempt are quasi-criminal and to warrant a finding of guilty in such cases, evidence must be clear, positive and convincing. *Fawick Airflex Co., Inc. v. United Electrical Radio and Machine Workers of America, Local 735 C. I. O., et al.*, 90 N. E. 2nd, 610.

The constitutional provision guarantees to every person his day in Court and reasonable opportunity to be heard or defend. *Truax v. Corrigan*, 257 U. S., 312.

Life and liberty, within the meaning of the guaranty, include all personal rights and their enjoyment, embracing the use and enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home and bring up children, freedom of worship, conscience, contract, occupation, speech, assembly, and press. *Grosjean v. American Press Co.*, 297 U. S., 233.

The order of the Supreme Court of Ohio finding this petitioner guilty of contempt was based upon a finding made without any evidence.

The finding made in the entry of October 21, 1959, is not compatible with the answer filed by this petitioner.

Since there was no evidence taken or any hearing permitted such findings could not be based upon the evidence.

An order based upon a finding made without evidence (*The Chicago Junction Case*, 264 U. S., 258, 263, 44 S. Ct., 317, 68 L. Ed., 667), or upon a finding made upon evidence which clearly does not support it (*Interstate Commerce Commission v. Union Pacific Railroad Co.*, 222 U. S., 541, 547, 32 S. Ct., 108, 56 L. Ed., 308), is an arbitrary act against which the courts afford relief, *Northern Pacific Railroad Co. v. Department of Public Works*, 268 U. S., 39; 45 S. Ct., 412, 69 L. Ed (836) 837.

The finding made as set out in numbers 3 and 4 in the entry of October 21, 1959, are not applicable and denied the petitioner his day in Court. The fact that the Supreme Court of Ohio refused to certify the record in a disbarment proceeding is not justification for denying the petitioner his constitutional rights under the fifth, sixth and fourteenth amendments.

It is understood that the overruling of a motion to certify the record does not constitute an affirmance of the judgment of the Court of Appeals, but is indicative that the Court does not consider the controversy one of public or great general interest within the meaning of Sections 2 and 6, Article IV of the Constitution of Ohio. *Keesecker, a Minor v. The G. M. McKelvey Co.*, 141 Ohio St. 162, *The Swetland Co. v. Evatt*, 139 Ohio St. 6; *The Park Investment Co. v. Evatt*, 139 Ohio St. 6; *Pearson v. Cartage Co.*, 148 O. S. 425.

A judgment of a Court of Appeals for one county in the State of Ohio does not make state law, and the denial of a motion to certify that case by the Supreme Court does not make state law. *West v. Telephone and Telegraph*

Co., C. C. A. 6th Ohio, 16 O. O., 431. Reversed on other grounds, 311 U. S. 223.

The Supreme Court of Ohio will take judicial notice of the record in a case previously before it involving the same subject matter and part. *Calloway v. Industrial Commission*, 115 O. S., 490; *Hughes v. County Board of Revision*, 143 O. S., 559.

Since the Supreme Court of Ohio refused to have the record certified in the disbarment proceeding involving the petitioner, J. Harvey Crow, the record in that case was never before them and under their own interpretation could not take judicial notice of that proceeding.

This petitioner was deprived of the right in the disbarment proceeding to present some of the defenses set out in his answer in this proceeding because the Supreme Court of Ohio refused to certify the record and hear the case.

Without any evidence the Supreme Court would have no knowledge of what was considered by the Court of Appeals in the disbarment proceeding.

To base any finding of fact upon which there was no evidence presented in this cause and of which the court cannot take judicial notice is a violation of the basic rights of this petitioner as provided under the fifth and fourteenth amendments to the Constitution of the United States.

The petitioner was deprived of his personal property without any trial, without any hearing, without any evidence and without the Supreme Court of Ohio affording the petitioner an opportunity to make any defense to the order to surrender his certificate.

The certificate issued in 1927 was personal property and belonged to the petitioner. The right to practice law in the state courts of Ohio was by virtue of the petitioner's

name appearing on the membership roll. The Supreme Court granted him a license to practice law. A license to practice law is intangible and a personal right. The certificate issued at that time was only evidence of that right but it was personal property. Said certificate could be sold or transferred like any other personal property. The right to practice law could not be transferred. Disbarment does not deprive the individual of the certificate but does deprive the individual of the intangible right to practice law in the State Courts.

To take away the petitioner's certificate without any hearing or evidence as shown by the entry of June 26, 1959, and Oct. 21, 1959, in this action was a violation of the fifth and fourteenth amendments of the United States Constitution. It deprived the petitioner of his property without due process of law.

When the Supreme Court refused the motion to certify in the disbarment proceeding and found the petitioner guilty of contempt of court on June 26, 1959, and ordered said petitioner to surrender his license (meaning certificate) on or before July 1, 1959, did said court consist of a fair and impartial tribunal?

During the time of above mentioned proceedings the Honorable James F. Bell paid to his own attorneys Jackman, Nichols and Grubbs, almost nine thousand dollars for legal services. It must be remembered that D. H. Jackman was a member of the committee and not their attorney who presented all matters involving the disbarment of the petitioner orally to the Supreme Court of Ohio. It also must be remembered that at the very time D. H. Jackman was opposing the motion to certify in the disbarment proceeding his law firm was employed by the Honorable James F. Bell who was sitting as a member of the Supreme Court of Ohio considering the issues involved.

In *Tumey v. Ohio* this Court set aside the convictions because the judge was interested in the case to the extent of $12.00. In this case the judge was interested in one of the parties to the extent of $9,000.00.

It would seem unrealistic to believe that the Honorable James F. Bell could be fair and impartial under these facts and circumstances.

It would follow that all proceedings in which he participated would be null and void and the tribunal on which he sat would not be fair and impartial.

It therefore follows that the Supreme Court of Ohio could not consider the motion to certify in the disbarment case, in this action because it was not made by a fair and impartial court.

It is hard to conceive how any person could lose his cause in court when he had his client sitting on the bench as judge to help make the decisions.

The fact that Judge Bell removed himself on the Application for Rehearing is justification for assuming that he was disqualified to hear these matters previously.

An impartial judge is one of the basic principles of our system of jurisprudence.

Under the common law, if an order of removal were made by two justices, and one of them was an inhabitant of the parish from which the pauper was removed, such order was illegal and bad, on the ground that the justice was interested, as being liable to the poor's rate. *Rex v. Great Chart*, Burr S. C. 194, Stra 1173.

This strict principle is and should be enforced at the present time.

To subject a defendant to trial in a criminal case involving his liberty, property, or personal rights, before a judge having a direct personal, substantial interest in convicting him is a denial of the due process of law and

violates the fourteenth amendment. *Tumey v. Ohio*, 273 U. S. 510.

This Honorable Court has said that every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear and true between the State and the accused, denies the latter, due process of law. *Tumey v. Ohio*, 273 U. S. 510, 532. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between the contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." *Offat v. U. S.*, 348 U. S. 11, 14.

The purpose of the law is that no judge shall hear and determine a case in which he is not wholly free, disinterested, impartial, and independent. *In Re Hupps Estate*, 291 P. 2d, 428.

It is disclosed in this action that the attorney who filed the application also personally represents the Honorable Carl V. Weygandt who is also a member of the Ohio Supreme Court.

This, in our humble opinion, would constitute a tribunal that was not fair and impartial.

In the case of *Truax v. Corrigan*, 257 U. S. 312 at 332, Chief Justice Taft defined "due process" as guaranteed by the fourteenth amendment as follows:

> "The due process clause requires that every man shall have the protection of his day in Court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

The standards set forth by this Court were not observed by the Supreme Court of Ohio and this contempt proceeding was a violation of the due process clause as guaranteed to this petitioner in the fifth, sixth and fourteenth amendments to the Constitution of the United States.

The questions presented are substantial, are of great public importance both to the citizens of Ohio and to the citizens of all states who have any matters that might come before the Courts.

We believe that these questions merit plenary consideration by this Court.

Respectfully submitted,

J. HARVEY CROW,
In Propria Persona.

APPENDIX A.

ORDER TO SHOW CAUSE.

No. 35,825.

THE SUPREME COURT OF THE STATE OF OHIO.

THE STATE OF OHIO, CITY OF COLUMBUS,

Of the Term of January, A. D. 1958.

To-wit: Tuesday, October 21st.

IN THE MATTER OF UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW.

ORDER TO SHOW CAUSE.

It having come to the attention of this Court that J. Harvey Crow who was disbarred from the practice of law in this state on August 16, 1956, has nevertheless continued such practice in violation of said judgment of disbarment, said J. Harvey Crow is hereby cited by this Court to show cause on or before November 8, 1958, why he should not be punished for contempt of court for said violation of said judgment of disbarment.

(Signed) CARL V. WEYGANDT,
Chief Justice.

(Duly certified.)

APPENDIX B.

MOTION TO STRIKE AND MAKE DEFINITE AND CERTAIN.

The so-called "Motion to Strike" filed herein by J. Harvey Crow is not responsive to the Show Cause Order heretofore issued on October 21, 1958. Said Motion is therefore stricken from the files, and the said J. Harvey Crow is ordered to comply, on or before January 21, 1959, with the said Show Cause Order by stating, under oath, whether he is or is not practicing law in the State of Ohio.

It is further ordered that a copy of this entry be served upon the said J. Harvey Crow by the Marshal of this Court by personally handing same to the said J. Harvey Crow.

(Duly certified.)

APPENDIX C.

CITATION IN CONTEMPT.

June 26, 1959.

J. Harvey Crow having been ordered to show cause why he should not be punished for contempt for failure and refusal to comply with this court's disbarment order and judgment and having failed to show such case, he is hereby found guilty of contempt of this court and is ordered to cease forthwith the practice of law; and he is further ordered to surrender his license therefor to the Clerk of this Court on or before July 1, 1959, or be sentenced to serve six months in jail for such contempt.

It is further ordered and adjudged that J. Harvey Crow pay the costs of this proceeding, taxed at $

/s/ CARL V. WEYGANDT,
Carl V. Weygandt, Chief Justice,
The Supreme Court of the State of Ohio.

(Duly certified.)

APPENDIX D.

ENTRY ON MOTION FOR REHEARING.

This day this cause came on to be heard on the application of J. Harvey Crow for a reconsideration of the order of this court made on June 6, 1959, finding said J. Harvey Crow guilty of contempt of court by reason of the fact that he failed and refused to comply with this court's disbarment order and judgment.

On consideration thereof, the court finds said application well taken and hereby grants the same.

Coming now to reconsider the order to show cause and the answer filed therein by J. Harvey Crow, the court finds:

(1) That the said J. Harvey Crow, in his first defense to said order, admitted that he was actively engaged in the practice of law in the state of Ohio, and that in connection therewith he used the words "attorney at law, law and other phrases" on his "door, window, telephone book and stationary" (sic).

(2) That the second defense fails to state a defense in that the name of the said J. Harvey Crow was stricken from the Roll of Attorneys of this court on December 18, 1958, following the denial of a motion to certify the affirmance of his disbarment by the Court of Appeals for the Second District, from which order the Supreme Court of the United States subsequently denied a writ for certiorari.

(3) That the third defense fails to state a defense to said show cause order in that said defense, and all its branches, were raised by the said J. Harvey Crow in his appeal from the disbarment order entered on August 16, 1956, by the Court of Common Pleas, of Champaign County, Ohio and fully considered by the Court of Appeals which affirmed said order, and by this court on motion to certify.

(4) That the fourth defense fails to state a defense in that said defense was raised by the said J. Harvey Crow in his appeal from the disbarment ordered entered on August 16, 1956, by the Court of Common Pleas of Champaign County and fully considered by the Court of Appeals which affirmed said order, and by this court on motion to certify.

(5) That the said J. Harvey Crow has continued to engage in the practice of law in Ohio despite an order of disbarment and that such practice constitutes a contempt of this court.

It is therefore ordered and adjudged that the said J. Harvey Crow is guilty of contempt of this court and he is ordered to cease forthwith the practice of law and the holding out of himself, in any manner and in any court, as an attorney at law; and, that the said J. Harvey Crow having heretofore surrendered the certificate evidencing his license to practice law to the Clerk of this court, the imposition of sentence for such contempt is hereby suspended pending compliance with this order.

It is further ordered and adjudged that J. Harvey Crow pay the costs of this proceeding, taxed at $

WEYGANDT, C. J., and BELL, J., not participating.

(Duly certified.)

FILE COPY

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No. 688

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PHILLIP K. FOLK,
State House Annex, Columbus 15, Ohio.,
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MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 688

IN THE MATTER OF THE UNAUTHORIZED PRACTICE OF LAW IN RE J. HARVEY CROW.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

Respondents respectfully urge that this case is not a proper one for review by the Supreme Court of the United States. There is no question involving the "due process" clauses of either the Fifth or Fourteenth Amendments to the United States Constitution nor of the provisions of the Sixth Amendment to the United States Constitution.

In order to demonstrate the correctness of this conclusion, we feel it necessary to state the facts of this case as disclosed by the record. This is necessary because petitioner, in his brief, has chosen to intermingle, in this appeal, a collateral attack upon the proceedings by which he was disbarred. Under the provisions of Rule 40, paragraph 3, of the Rules of this Court, we must state our dissatisfaction with the material contained in that section of petitioner's brief, under the heading, statement of fact:

FACTS OF RECORD

The application in this case was filed by the named attorneys in their *individual capacities* as attorneys and counselors at law and members of the bar of the State of Ohio. A brief in support of the application was filed coincidentally and is appended hereto. All of these named attorneys were members of the Unauthorized Practice of Law Committee of the Ohio State Bar Association, to which committee come complaints of the unauthorized and illegal practice of law in Ohio; it was this fact that determined who should be named applicants on the application filed in the Supreme Court of Ohio.[1]

On October 21, 1958, the Ohio Supreme Court issued to Mr. Crow an "Order to show cause why he should not be held in contempt of Court" as set out in Appendix A of petitioner's brief.

Petitioner Crow filed a motion to strike, and to make definite and certain, given parts of the application. This motion was overruled as not responsive to the Court's order to show cause on January 14, 1959, as shown in Appendix B of petitioner's brief.

On January 21, 1959, Mr. Crow filed an answer to the order to show cause, in which he set up four defenses. These four defenses, in effect, stated two propositions: (1) that Mr. Crow was entitled to practice law in Ohio by virtue of his admission to the Bar of this Supreme Court of the United States and to the Bar of the Federal District Court for the Northern District of Ohio; and, (2) that his disbarment was invalid inasmuch as the trial court was without jurisdiction.

[1] Petitioner Crow has stated that John P. Case, who was one of three trial judges in his disbarment case, was one of the applicants. Just what inference is intended to be drawn from this gratuitous statement is unknown to respondents.

Based on the answer of Mr. Crow, there were no facts in issue. As a result, the Supreme Court of Ohio, on June 26, 1959, held Mr. Crow in contempt and ordered him to surrender his license. Mr. Crow made application for a rehearing of this judgment, which application was granted and again the Supreme Court of Ohio found Mr. Crow in contempt and set out the court's conclusions of law on the defenses raised. It is the correctness of this judgment and the refusal of the Ohio Supreme Court to grant a rehearing thereon that now is before this Honorable Court by petition for a writ of certiorari.[2]

THE QUESTION IN THIS CASE

Did the Supreme Court of Ohio err in finding that the answer of J. Harvey Crow admitted that he was engaged, illegally, in the practice of law in Ohio?

[2] Petitioner Crow has made certain statements, beginning with the last three paragraphs on page 6 of his brief and continuing on all of page 7 and down to the last two paragraphs on page 8, which, it is respectfully urged, are totally improper. They are improper because they attempt circuitously to attack the integrity of the Ohio Supreme Court's decision in *this* case by raising matters which are irrelevant and immaterial here, *as neither Judge Bell nor Chief Justice Weygandt took part in this judgment which is now before this Court.*

It shall be a very broad brush which will tar a judge of any court with bias because of other prior or even concurrent professional or social dealings with one of counsel in a current matter before the court *without* any showing of actual bias. Such a theory shall cause judges to be cloistered to an extent never before existing as a matter of fact and have a tendency to destroy their usefulness as judges. Can it be contended that because of the fact that counsel on this brief represented Chief Justice Weygandt in Case Number 36159, The State ex rel Crow v. Weygandt, Chief Justice, et al, 170 O. S. 81, has thereby prejudiced the Chief Justice of Ohio so far as to preclude his ever appearing before Chief Justice Weygandt in other matters *without showing any actual bias?* Such a contention is without foundation in history, law, experience or logic. To *assume* a bias is a concept foreign to the law of this country.

ARGUMENT

Let us now consider the answer of J. Harvey Crow and the defenses he puts forward.

In his first defense, he states that "he is and was entitled to practice law within the State of Ohio" "by Virtue of his Admission and Membership in good standing" at the Bar of the Supreme Court of the United States and the Federal District Court for the Northern District of Ohio.[3]

No authority for such a proposition has been put forth by J. Harvey Crow. To the contrary are the cases of *Ginsburg v. Kovrak*, 392 Pa. 143; 139 A. (2d) 889, appeal dismissed for want of a substantial federal question 358 U. S. 52; and *Petition of Kearney*, 63 So. (2d) 630 (Florida 1953).

In the Ginsburg case, the Supreme Court of Pennsylvania held that admission to practice before the Federal District Court for the Eastern District of Pennsylvania and before the Supreme Court of the United States did not permit the defendant to practice law in the Commonwealth of Pennsylvania nor to hold himself out as being entitled to practice therein.

In the Kearney case, the Supreme Court of Florida held that one desiring to practice law before the federal courts, departments or commissions in Florida, was nevertheless required to qualify to practice law in the State.

Also in point are *People ex rel Chicago Bar Association v. Navotny*, 386 Ill. 536, 54 N. E. (2d) 536, and *State ex rel. Boynton v. Perkins*, 138 Kan. 899, 28 P. (2d) 765.

That for which petitioner contends cannot be sustained upon examination. We will not attempt a detailed examination here but will simply note one problem. The various

[3] It should be noted here that J. Harvey Crow has now been disbarred by this Honorable Court; Misc. Docket 594, June 1, 1959, and by the Federal District Court for the Northern District of Ohio, 82 Ohio Law Abstract 71, 82 Ohio Law Abstract 78.

states have different requirements for admission to the Bar. Some have no educational requirements at all. Can persons be admitted in their home state and thence their local Federal District Court and then other district courts and thereafter set themselves up to practice law in the states of such other district courts without regard to the requirements for admission in those states? Such a situation would be chaotic.

The second, third, and fourth defenses raised: Petitioner Crow generally constitute a collateral attack on his disbarment. The questions which Mr. Crow now raises were all raised at the time of the disbarment proceedings against him. (See Appendix D, Petitioner's Brief) This Honorable Court denied a petition for a writ of certiorari in that case on June 24, 1958. These jurisdictional grounds, and other alleged errors, are now *res judicata*, and not subject to a collateral attack. *Stoll v. Gottlieb*, 305 U. S. 165; *Trainies v. Sunshine Mining Company*, 308 U. S. 66; *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371.

J. Harvey Crow has also complained that he has been deprived of his certificate to practice. The right to retain this certificate was lost when petitioner was disbarred, not in this contempt action. Is petitioner saying that he has a *right* to retain the certificate which is official evidence of a privilege which petitioner no longer possesses; and which certificate was issued to petitioner only at a time when he was so privileged, and as evidence of the privilege? One can only speculate why he wishes to retain the certificate and to what use he might put it. So far as the frame on the certificate; this he was *not* required to turn in to the court, but he did so voluntarily. No doubt the frame will be returned to him upon his request.

CONCLUSION

J. Harvey Crow in his answer to the "Order to show cause * * *" admitted he "used the words Attorney-at-Law on his stationary" (sic); admitted he used "the words attorney-at-law, and other phrases" on his "door, window, telephone book". He took the position that he was "entitled to practice law within the State of Ohio.", based on his membership *at that time* at the Bar of this Honorable Court and at the Bar of the United States District Court for the Northern District of Ohio.

The answer of J. Harvey Crow raised *no issue of fact* and, therefore, no hearing was required. He raised questions of law, only, by his answer, and it is respectfully submited that the Supreme Court of Ohio correctly answered those questions.

The citation of authority by Petitioner Crow is either not in point in this case or in no way militates against the position of respondents on the facts in this case.

It is respectfully submitted that this is not a proper case upon which to grant the petition for a writ of certiorari.

Respectfully submitted,

PHILLIP K. FOLK,
Attorney for Respondents.

APPENDIX

Brief in Support of Application

Preliminary Statement

This proceeding is filed at the direction of the Executive Committee of the Ohio State Bar Association.

The conscience of the public in Ohio and of the bar is shocked that a person who has been twice disbarred should openly and notoriously defy the order of disbarment by continuing to hold himself out as an attorney and by continuing to practice law.

Argument

Many complaints have been received by the Ohio State Bar Association concerning the illegal activities of J. Harvey Crow since his last disbarment. Certainly the Bar Association can and should take steps to halt these practices of a man who not once, but twice, has demonstrated his moral unfitness to be a member of the legal profession. His disrespect and disregard for, and defiance of, the authority of this Court is not an offense against a small segment of the populace of Ohio, but is an offense against all of the people and our constitution.

Both the public and the Bar must ask: Is there no remedy to protect the public from such fraudulent conduct? Is there no remedy to prevent the practice of law by a person disbarred, either under the procedure obtaining at the time J. Harvey Crow was disbarred, or under the present system as set out in Rule XXVII of this Court? Does Rule XXVII take on the status of an empty shell that does no more than "strike" a person's name from the roll of attorneys?

The answer to these questions is that there is a remedy. Rule XXVII is not an empty shell. J. Harvey Crow, by his defiant conduct, is in contempt of this Court and is

amenable to summary punishment for such contempt. The allegations in the Application demonstrate that there is need for summary action within the jurisdiction of this Court in order to protect the public.

In the case of the *People ex rel. State Bar of Illinois v. Peoples Stockyards State Bank*, 344 Ill. 462, 176 N. E. 901, a procedure substantially identical to that here presented was followed. The Supreme Court of Illinois, in a long and well considered opinion, completely analyzed the various questions involved. The Respondent in that case contended that that Court had no jurisdiction to entertain the original proceeding of this nature, and that its participation in the proceedings in various trial courts did not constitute a contempt of the Supreme Court, and that the legal services which Respondent performed outside a court did not constitute a contempt of any court, whether or not such services amounted to the practice of law.

In observing that the Constitution of the State of Illinois reserves the judicial powers to the courts, as does the Ohio Constitution, the Court noted that within such judicial power are all powers which are necessary for the complete performance of judicial functions. The Illinois decision points out that although the Constitution does not expressly confer upon the Supreme Court the jurisdiction with respect to the admission of attorneys to the practice of law, that such power and jurisdiction is necessarily implied and is inherent in the court. Further, the Court held that they not only had the inherent power to determine the educational and moral qualifications of applicants for admission to the Bar, but also could discipline or disbar attorneys for misconduct.

In answer to the contention that the Constitution of the State of Illinois provided only that the Supreme Court should have jurisdiction in cases relating to the revenue,

in mandamus, habeas corpus and appellate jurisdiction in all other cases, the Court stated that the original jurisdiction of the Supreme Court over admissions and discipline had never been questioned.

This holding of the Illinois court is directly in accord with the holding of this Court in the case of the *Mahoning County Bar Association v. Franko*, 168 O. S., 17, where it was held that this Court has inherent jurisdiction over proceedings relating to the disciplining of members of the legal profession, and that Rule XXVII of this Court provides a procedure to activate the inherent *duty*, and to implement the inherent power of the court to supervise the disciplining of members of the legal profession in Ohio.

The Illinois court in the Peoples Stockyards State Bank case analyzed the contentions of Respondent in the following language:

> "Having inherent and plenary power and original jurisdiction to decide who shall be admitted to practice as attorneys in this State, this Court also has all the power and jurisdiction necessary to protect and enforce its rules and decisions in that respect. Having power to determine who shall and who shall not practice law in this State, and to license those who may act as attorneys and forbid others who do not measure up to the standards or come within the provisions of its rules, it necessarily follows that this court has the power to enforce its rules and decisions against offenders, even though they have never been licensed by this court. *Of what avail is the power to license in the absence of power to prevent one not licensed from practicing as an attorney? In the absence of power to control or punish unauthorized persons who presume to practice as attorneys and officers of this court the power to control admissions to the Bar would be unavailing.* And so it has been held that the court, which alone has authority to license attorneys, has as a necessary corollary ample implied power to protect this function by punishing unauthorized persons for usurping the privilege of acting as attorneys." (Emphasis supplied)

The emphasized language in the above quotation from the Illinois decision was quoted with approval by this Court in the case of *Land Title Abstract & Trust Company v. Dworken*, 129 O. S., 23.

The Illinois Court also said:

> "Respondent also asserts that while this court has jurisdiction to entertain a proceeding to punish an unlicensed individual for appearing and practicing in this court it has no such jurisdiction or power over one who has been guilty of unauthorized practice of law by appearing in the trial courts of this state. No doubt each trial court in this state has ample authority to punish as for contempt of that court any person who presumes to appear and act as an attorney in that court without having been licensed by this court. But it does not follow that the jurisdiction of the trial court is exclusive in that respect. While the wrongful act constitutes a contempt of the trial court because of the imposition and fraud upon that court, *yet it is also a contempt of this court, and punishable as such, because the wrongdoer has affronted this court by usurping a privilege solely within the power of this court to grant.*" (Emphasis supplied)

This is a completely unique situation. J. Harvey Crow has an extensive law practice at the present time, and continues to maintain the same. It is not limited to Champaign County, wherein he maintains his law office, but he also has, and will continue, to practice in Franklin, Fayette, Madison, Logan, Allen, Hamilton and Montgomery Counties, among others.

No other state court has jurisdiction over all of these counties. This case is further unique in that it is the only instance known to Applicants of a disbarred attorney refusing to stop practicing, with the possible exception of the well-known Thatcher case of almost fifty years ago.

The case of *In re Charles A. Thatcher*, 80 O. S. 492, is authority for the position that this Court has inherent

jurisdiction of proceedings to discipline members of the Bar. In the case of *Mahoning County Bar Association v. Franko*, supra, it was held that this Court has inherent exclusive jurisdiction over admission to the practice of law in Ohio. This Court has also held in the case of *Judd v. The City Trust & Savings Bank*, 133 O. S. 81, that, in Ohio, the power to regulate, control and define the practice of law rests inherently in the judicial branch of the government.

That persons having no official relation to this Court are subject to the jurisdiction of this Court in matters pertaining to the Court's authority over admission and practice is demonstrated by the case of *State, ex rel Turner, Attorney General v. Albin*, 118 O. S. 527, wherein the Court said:

> "If persons of ill repute and lacking honesty and integrity, can gain admission to the bar, the good repute of the bench and bar will suffer, the courts will lose the confidence of litigants, and their usefulness will be destroyed."

and,

> "Unless the purity of the processes of selecting attorneys can be preserved, the usefulness, if not the very existence, of the court is threatened."

and,

> "The purpose in bringing the defendants before the court is to vindicate the dignity and preserve the authority of the court."

Certainly these statements are no less valid when applied to a fact situation as set forth in the Application.

It is clear that if one has usurped the privilege solely within the power of this Court to grant, then it becomes the duty of this Court to vindicate its authority in this field by taking appropriate action. We think that the unique

circumstances of this case come within the purview of the following statement of the Thatcher case:

> " considering the unsettled state of the law in this state and the peculiar circumstances of this case we are entirely warranted in exercising jurisdiction without being in any way under obligation to do so in every case which may be brought to our notice."

Applicants are well aware that in the ordinary illegal practice case, a proceeding is instituted in a lower court. This, however, is not an ordinary type of case. Here, we have a man who has practiced law for many years and is intellectually aware of the nature and quality of the acts which he performs.

J. Harvey Crow here openly flouts the authority of this Court over the practice of law and deceives the public at large by purporting to have the authority to represent them. The only effective way in which Mr. Crow may be dealt with is summarily by action in this Court.

This Application, which is in nature a document informing the court of the activities of J. Harvey Crow, is not unique. In addition to the Illinois case discussed above, this type of procedure has been previously followed in the case of *In re Duncan*, 83 S. Car. 186, 65 S. E. 210. The procedure in the Duncan case is identical to that followed here, with the exception that the information was furnished to the court by the Attorney General, rather than by the bar association. The Duncan case was a case where the Supreme Court received information concerning a disbarred lawyer continuing to practice.

The Application directs itself to the constitutional power of this Court over admissions to the bar, and its control over the practice of law.

Applicants, and through them, the Ohio State Bar Association, are prepared to meet their responsibility to this Court by undertaking all responsibilities which may be imposed by this Court in implementing the Application.

Conclusion

In view of the unique features of this case, as set out hereinbefore, and in view of the fact that this action directly complements the authority of this Court to discipline attorneys under Rule XXVII, we believe that this Court should entertain the Application.